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**Notice of Allowability**

Application No.

09/938,415

Examiner

Andrew T Sever

Applicant(s)

JOHNSON ET AL.

Art Unit

2851

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/01/2004.
2. ☒ The allowed claim(s) is/are 1-16.
3. ☒ The drawings filed on 24 November 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>9/2004</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                             | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to the 35 USC 112 1<sup>st</sup> paragraph rejection of claims 1-16 have been fully considered and are persuasive. The rejection of claims 1-16 has been withdrawn.

### ***Allowable Subject Matter***

2. Claims 1-16 are allowed.

3. The following is an examiner's statement of reasons for allowance: Claims 1-16 are allowed for the reasons cited by the applicant in applicant's arguments received on 7/17/2003 namely that the prior art of record did not teach both the elongated aperture and the illumination spot, wherein the illumination spot is oriented generally transverse (perpendicular) to linear elements of the microstructure. Applicant's subsequently added claims also claim these limitations and thus are also allowable.

It should be noted that in the non-final rejection mailed on 11/24/2003, two US patents were cited and explained that could possibly read on the claimed invention. US 6,256,100 to Banet et al. teaches in figure 7A what appears to be a method of shining an elongated illumination spot transverse to the linear elements of the microstructure, however upon further review of Banet, what is labeled as 149, appears to be an electric field or acoustical waves which is caused to propagate transverse to the linear elements in Banet rather than an illumination spot;

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only 17 is indicated to be an illumination spot and its elongated axis is parallel to the linear elements of the microstructure. US 6,081,325 to Leslie teaches in figure 9c what appears to be microstructures, but rather this is an abstract grid pattern to insure the entire surface to be inspected is inspected (Leslie refers to each rectangle as a pixel in column 11 lines 59-67.)

Accordingly since neither Banet nor Leslie teaches the claimed subject matter and no other prior art was found that either alone or in combination with Banet, Leslie or the prior art cited in the non-final rejection mailed on 4/18/203 teaches the claimed subject matter, claims 1-16 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

#### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 6,654,131 Opsal et al. teaches in figure 3 a CD metrology device.

US 6,215,551 to Nikoonahad et al. is similar to Leslie et al.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T Sever whose telephone number is 571-272-2128. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on 571-272-2258. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AS

  
JUDY NGUYEN  
PRIMARY EXAMINER